STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Dotsy, LLC, Petitioner, vs. Greenwood County Assessor, Respondent.	Docket No. 13-ALJ-17-0061-CC **ORDER**

APPEARANCES: For Petitioner: James G. Carpenter, Esquire
L. Warren Clayton, III, Esquire
For Respondent: Ray N. Stevens, Esquire
Walter H. Cartin, Esquire

STATEMENT OF THE CASE

This matter came before the Administrative Law Court ("ALC" or "Court") for a contested case hearing on October 28, 2013, pursuant to S.C. Code Ann. § 12-60-2540(A). Petitioner Dotsy, LLC ("Dotsy") requested a contested case hearing against the Greenwood County Assessor ("Assessor"), challenging the Assessor's valuation of Dotsy's real property. Dotsy exhausted all prehearing administrative remedies and timely filed a request for a contested case hearing. Upon consideration of the testimony, exhibits, pleadings, memoranda, record, and arguments of counsel, the ALC finds for Dotsy.

ISSUE

I. **Whether structures on a tract of agricultural real property may be assessed at fair market value separately from the property upon which they sit; or whether the value of the structures is already included in, and subsumed by, the tract's fair market value for agricultural purposes?**

FINDINGS OF FACT

Dotsy is the owner of a family farm in Greenwood County, South Carolina, consisting of five (5) tracts, two (2) of which are at issue: one located at 110 Booker Road, TMS # 7811-016-544-000 (213.0 acres) and the other at 8809 Highway 246 South, TMS # 7801-804-128-000 (304.1 acres) (collectively the "Parcels" or "Tracts"). The vast majority of the Parcels had been

previously classified as "agricultural real property." The Parcels contained two houses and multiple barns, storage sheds, and outbuildings used in farming operations. The two houses, one on each Parcel, were originally legal residences, but have not been legal residences for about 20 years. These houses are now used as headquarters for Dotsy's farm operations. The houses provide temporary housing for farm workers. The houses and other outbuildings store: farming equipment, tools, UTV's, spraying equipment, spreaders, tractors, implement parts and manuals, fertilizer, lime, seeds, herbicides, and other supplies. In and around these buildings, farming equipment is cleaned, repaired, refueled, and serviced. One of the houses contains the farm office where the day's farming tasks are planned. The houses and other structures are used primarily in conjunction with the agricultural usage of the Parcels.

In 2011, the Assessor carved out two house and ten acres on the Parcels, classified them as "other real property," and taxed them at six percent of fair market value. The Assessor also assessed and taxed other structures located on the Parcels at four percent of their fair market agricultural use value. The Assessor concluded the land within the Parcels had an agricultural use value of $70,890 and the structures on the land had a value of $211,500.[1] Therefore, using the Assessor's method of valuation, the Assessor valued the Parcels at an aggregate value of $282,390 for Tax Year 2011.

Dotsy timely appealed the Assessor's 2011 assessment. The Assessor denied the majority of Dotsy's appeal, and Dotsy appealed to the Greenwood County Board of Assessment Appeals ("Board"). The Board issued its decision by letter on January 16, 2013, upholding the decision of the Assessor. Dotsy filed a Motion to Reconsider, which the Board denied. Dotsy appealed to the ALC and requested a Contested Case Hearing on February 12, 2013.[2]

STANDARD OF REVIEW

The ALC reviews the decision of the Assessor *de novo*. Reliance Ins. Co. v. Smith, 327 S.C. 528, 534, 489 S.E.2d 674, 677 (Ct. App. 1997) (explaining "although a case involving a property tax assessment reaches the ALJ in the posture of an appeal, the ALJ is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the ALJ is in the nature of a *de novo* hearing."). On appeal, "the assessor's decision as to

[1] None of the structures on the Parcels are the "legal residence" of any person nor are they used to conduct a for profit, non-agricultural business.

[2] The Parties have stipulated that the Parcels are classified in their entirety as "agricultural real property" and the maximum taxation rate is four percent.

the situs of property, its taxability, and the valuation put on it generally is presumed to be correct until the contrary appears, and the person complaining has the burden of proving his grievance." S.C. Tax Comm'n v. S.C. Tax Bd. of Review, 278 S.C. 556, 562, 299 S.E.2d 489, 492-93 (1983) (citing 84 C.J.S. Taxation § 537(a)); see also Reliance Ins. Co. v. Smith (the burden is on the party challenging the Board's decision); Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) (the burden is on the party challenging the Assessor's determination).

DISCUSSION

The interpretation of the statutes governing the valuation of agricultural real property is the issue before the Court. While both Dotsy and the Assessor assert S.C. Code Ann. § 12-43-220 is clear on its face, the Parties reach different conclusions regarding the appropriate valuation method.

The Assessor argues the use value methodology of S.C. Code Ann. § 12-43-220(d)(2)(A) applies exclusively to the land, a sub-class of the broader classification of "agricultural real property." Therefore, to properly value all of the agricultural real property, comprising land and the improvements and structures on the land, county assessors must then determine the value of the structures on the agricultural real property. According to the Assessor, the use value of the agricultural land must be added to the fair market value of the structures on the agricultural land to determine the "fair market value for agricultural purposes."

Dotsy contends that the value of the improvements and structures on the land is subsumed in the statutory calculation of the Parcel's Agricultural Use Value, and separately assessing the structures is contrary to the plain language of the statutes.

A. Statutory Interpretation and Long Standing Practices

Respondent points out that its method of calculating the value of agricultural land and improvements separately comports with the South Carolina Department of Revenue's (DOR) interpretation of Section 12-43-220(d)(2)(A) and the longstanding practice of all the counties in the state. "The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. S.C. Bd. of Exam'rs in Optometry, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) (citing Emerson Elec. Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986); Faile v. S.C. Employment Sec. Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976)). "[W]here the construction of

the statute has been uniform for many years in administrative practice, and has been acquiesced in by the General Assembly for a long period of time, such construction is entitled to weight, and should not be overruled without cogent reasons." Etiwan Fertilizer Co. v. S.C. Tax Comm'n, 217 S.C. 354, 359, 60 S.E.2d 682, 684 (1950) (citations omitted). This is a situation where the DOR's construction of the statute is entitled to such respectful consideration; the first paragraph of Section 12-43-220(d)(2)(A), at issue here, was enacted in 1979 by Act 199 and has been interpreted by DOR and counties to require adding the value of improvements to the Agricultural Use Value for over thirty-four years.

Our Supreme Court has held that where "the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). However, "where a statute is ambiguous, the Court must construe the terms of the statute." Wade v. Berkeley County, 348 SC 224, 229, 559 S.E.2d 586, 588 (2002). Further, "[i]n construing a statute, the Court looks to its language as a whole in light of its manifest purpose." Adams v. Texfi Indus., 320 S.C. 213, 217, 464 S.E.2d 109, 112 (1995) (citing Simmons v. City of Columbia, 280 S.C. 163, 311 S.E.2d 732 (1984)). An "ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." State v. Hudson, 336 S.C. 237, 247, 519 S.E.2d 577, 582 (Ct. App. 1999). Furthermore, "where substantial doubt exists as to the construction and interpretation of legislative action with respect to the enactment and enforcement of tax statutes, the doubt must be resolved against the government." Columbia Ry., Gas & Elec. Co. v. Carter, 127 S.C. 473, 121 S.E. 377, 380 (1924).

Although courts give great weight to an agency's long-standing construction of a statute, such construction is not dispositive of the issue. Plyler v. Evatt, 313 S.C. 405, 408, 438 S.E.2d 244, 246 (1993) (citing Gilstrap v. S.C. Budget & Control Bd. 310 S.C. 210, 423 S.E.2d 101 (1992)). While a court typically defers to an agency's construction of its own regulation, where the plain language of the statute is contrary to the agency's interpretation, the Court will reject its interpretation. Brown v. S.C. Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." Hodges v. Rainey, 341 S.C. at 85, 533 S.E.2d at 581 (2000) (citations omitted). The language in Sections 12-37-10(1), 12-43-220 and 12-43-230 is unambiguous. It is clear that the "fair market value for agricultural purposes" includes land used

for the growth of agricultural products and the buildings or improvements on that land. South Carolina's statutes, regulations and case law, as well as the DOR's instructional publications, all support Dotsy's position that structures located on a tract of agricultural real property, which are not used as a "legal residence" or "other business for profit," are classified as agricultural real property and their taxable value is included in the tract's "fair market value for agricultural purposes."

B. THE SOUTH CAROLINA STATE CONSTITUTION REQUIRES A SEPARATE METHOD OF TAXATION FOR AGRICULTURAL REAL PROPERTY.

The South Carolina State Constitution requires certain properties to be taxed as "agricultural real property." "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to: (A) four percent of its value for such purposes." S.C. CONST. ART X, § 1(4); see also S.C. Code Ann. § 12-43-220(d)(1)(A).

Under South Carolina law, if at least fifty percent of a tract of real property is used for agricultural purposes, the entire tract must be classified and assessed as "agricultural real property" and the assessor may not carve out and separately assess a small portion of the tract, even if it is not being used strictly for agricultural purposes. S.C. Code Ann. § 12-43-230; Jasper County Tax Assessor v. Westvaco Corp., 305 S.C. 346, 347-48, 409 S.E.2d 333, 334 (1991). The value of farm structures is subsumed in the property's "fair market value for agricultural purposes." Improvements such as a farmhouse, barn or outbuilding do not change the essential agricultural character of a tract of agricultural real property. See Rabbit Point Farm Ltd. v. Charleston County Assessor, Docket No. 97-ALJ-17-0501-CC (1998).

There are only two exceptions to this rule: (1) legal residences of the taxpayer or his immediate family, and (2) when the real property is being used for some other business for profit. See S.C. Code Ann. §§ 12-43-230, 12-43-220 (c)(1); S.C. Code Reg. 117-1780-1 through 117-1780.3. These two statutory exceptions are the only circumstances that allow part of an agricultural real property tract to be assessed and taxed at its full fair market value. The Parties agree that neither exception applied to Dotsy's Parcels in 2011. Besides the two noted exceptions, the statutory method of classifying and valuing a tract of agricultural real property is comprehensive and includes all improvements located on that tract of agricultural real property.

C. The South Carolina Code, Regulations, and the Department of Revenue Instructional Publications Include Structures in Agricultural Real Property.

The definition of "real property" includes the structures and improvements on the land. "'Real property' shall mean not only land, city, town and village lots but also all structures and other things therein contained or annexed or attached thereto which pass to the vendee by the conveyance of the land or lot." S.C. Code Ann. § 12-37-10(1). DOR's publication, South Carolina Property Tax § 110.1, states, "'Real property' means not only land, but also all structures and other things therein contained or annexed or attached to the land that pass... by the conveyance of the land." Id.

South Carolina's statutes require properties classified as "agricultural real property" to be valued and assessed at a statutory value called its "fair market value for agricultural purposes" or "Agricultural Use Value." S.C. Code Ann. § 12-43-220(d). This statutory value includes the value of structures on the agricultural real property.

Section 12-43-230(a) provides:

> [T]he words "agricultural real property" shall mean any tract of real property which is used to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful to man, including the preparation of the products raised thereon for man's use and disposed of by marketing or other means. It includes but is not limited to such real property used for agriculture, grazing, horticulture, forestry, dairying and mariculture. In the event at least fifty percent of a real property tract shall qualify as "agricultural real property," the entire tract shall be so classified, provided no other business for profit is being operated thereon. The term "agricultural real property" shall include real property used to provide free housing for farm laborers provided such housing is located on the tract of land that qualifies as agricultural real property.

South Carolina's statutes repeatedly indicate that agricultural real property includes the attached structures. See S.C. Code Ann. §§ 12-43-230(a), 12-43-220(d)(5), 12-43-233. South Carolina's Regulations do as well. The Regulations also support the same statutory scheme for classification and valuation of agricultural real property. See S.C. Code Reg. 117-1700.1 (real property and agricultural real property include the structures attached thereto); S.C. Code Reg. 117-1780.1-1780.2 (defining what real property qualifies as "agricultural real property"); S.C. Code Reg. 117-1780.2-1780.3 (if at least fifty percent of a tract qualifies as "agricultural real

property" the entire tract shall be classified as agricultural real property); S.C. Code Reg. 117-1840 (providing tables of the values for the fair market value for agricultural purposes of agricultural real property). Like the statutes, the regulations hold that agricultural real property includes attached structures, and that the values of the structures on agricultural real property are subsumed within the "fair market value for agricultural purposes." They are not valued and taxed separately.

D. Legislative History of the Relevant Statutes Establishes that Agricultural Real Property's "Fair Market Value for Agricultural Purposes" Includes the Value of Buildings and Improvements on the Land.

The General Assembly defines "fair market value for agricultural purposes," how it is applied, and how it must be calculated in S.C. Code Ann. § 12-43-220(d)(2). Agricultural Use Values were originally enacted in 1975 by Act 208 § 2(d).[3] Similar to the current § 12-43-220(d), Act 208 provided a tax break for agricultural "real property." However, Act 618 of 1976, § 5 amended Act 208 of 1975, § 2(d), changed statutory language from "agricultural real property" to "agricultural land".[4] Act 618 of 1976 also added what is now § 12-43-220(d)(2)(A), but it did not contain references to "land" for growth of timber until three years later. The General Assembly then changed the reference from agricultural "land" back to agricultural "real property" in 1979 Act 133, § 2.[5]

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[3] 1975 Act 208, § 2(d) stated that: "Agricultural real property which is actually used for such purposes shall be taxed on an assessment equal to four percent of its fair market value for such purposes..."

[4] 1976 Act 618, § 5 stated:

> SECTION 5. Tax assessment on agricultural land. – Section 2(d) of Act 208 of 1975 is amended to read:
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> (d)(1) Agricultural land which is actually used for such agricultural purposes shall be taxed on an assessment equal to
>
> (A) Four percent of its fair market value for such agricultural purposes for owners or lessees who are individuals or partnerships and certain corporations which do not:
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> (2) 'Fair market value for such agricultural purposes' is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of like soil in the locality or a reasonable area of the locality, not including the agricultural products thereon. Soil capability means the capability of the soil to produce typical agricultural products of the area considering any natural deterrents to the potential capability of the soil as of the current assessment date.

[5] 1979 Act 133 stated:

> No. 133
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> An Act To Amend Sections 12-43-220 And 12-43-230, Code Of Laws Of South Carolina., 1976, As Amended, Relating To Equalization And Reassessment Program For Real Property, And To The Definition Of The Term "Agricultural Real Property" For Purposes Of Tax Assessment, So As To Change The Reference From Agricultural Land To Agricultural Real Property And To

For a period of three years, from 1976 to 1978, South Carolina's agricultural real property valuation statute specifically applied only to agricultural land. However, in 1979, the General Assembly amended § 12-43-220(d)(1), so that the agricultural assessment value, the "fair market value for agricultural purposes" would apply not only to agricultural "land," but rather apply to agricultural "real property," which include both the land and all structures attached. The change from agricultural "land" to "real property" was the only change made to Section 12-43-220(d)(1).

The Assessor's contention that a tract's Agricultural Use Value only applies to agricultural "land" may have been valid from 1976 to 1979. However, by enacting Act 133 of 1979, the General Assembly decisively changed the language of § 12-43-220(d) so that the property valuation "fair market value for agricultural purposes" would apply to and include not only land, but also all structures attached. This portion of § 12-43-220(d)(1) has not changed since it was amended by Act 133 of 1979. Therefore, in 2011, the Agricultural Use Value for Dotsy's Parcels already included the value of the structures on Dotsy's Tracts. The Assessor's separate assessment and taxation of Dotsy's non-residential houses and other structures was erroneous.

E. References to "Land" Used for Growth of Timber or Crops in § 12-43-220(D)(2) were not an Expression of the General Assembly's Intent that "Fair Market Value for Agricultural Purposes" Exclude Building Values.

The Assessor asserts that the multiple references in § 12-43-220(d) to "fair market value for agricultural purposes" applying to "land" used for growth of timber or other agricultural products in § 12-43-220(d)(2) is proof that Agricultural Use Value only applies to land, and does not include the structures. The repeated use of the term "land" in § 12-43-220(d)(2) was added by 1979 Act 199, Part II, § 23. A review of Act 199 illustrates that the General Assembly included an introductory paragraph in Act 199, § A, identifying South Carolina's substantial

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Include Property Used To Provide Free Housing For Farm Laborers In The Definition Of "Agricultural Real Property".

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Taxing of real property

SECTION 2. Subitem (1) of item (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended by striking the word "land" on line one and inserting "real property". When amended, the subitem shall read:

" (1) Agricultural real property which is actually used for such agricultural purposes shall be taxed on an assessment equal to:

(A) Four percent of its fair market value for such agricultural purposes . . . ."

timber production, and expressing the need to distinguish property used for farming trees versus other crops, and the need to value property used for timber growth differently than property used to produce other agricultural products.[6] Therefore, references to timber or crop "land" in § 12-43-220(d)(2) were attempts to distinguish areas used for growing timber versus other products, and not an expression of the General Assembly's intent for "fair market value for agricultural purposes" to only apply to land.[7]

F. This Court's Prior Decisions Hold That the Value of Structures on Agricultural Real Property were Included in the Property's Agricultural Use Value.

The same issue has been presented before the ALC on three separate occasions. The ALC has previously ruled that the value of the structures and improvements located on tracts of

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[6] 1979 Act 199 states:

> A. The General Assembly finds that a substantial part of the lands used for the growth of agricultural products in this State is in fact used for the growth of timber. The remainder of land used for the growth of agricultural products is applied to the growth of many other diverse agricultural products. Because of this situation the General Assembly finds that the income from timberlands should be used to determine the use value of such lands and income of lands used to produce other agricultural products should be used to determine the use value of those lands. The General Assembly further finds that a locality may appropriately include more than one county and be designated as a region.
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> B. The first paragraph of item (2) of subsection (d) of Section 12-43-220 of the 1976 Code, as last amended by Act 438 of 1978, is further amended to read:
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> 'Fair market value for such agricultural purposes' when applicable to land used for the growth of timber is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents of such lands for timber growth or by capitalization of typical net income of similar soil in the region or a reasonable area of the region from the sale of timber, not including the timber growing thereon, and when applicable to land used for the growth of other agricultural products the term is defined as the productive earning power based on soil capability to be determined by capitalization of typical cash rents or by capitalization of typical net annual income of similar soil in the region or a reasonable area of the region, not including the agricultural products thereon. Soil capability when applicable to lands used for the growth of timber products means the capability of the soil to produce such timber products of the region considering any natural deterrents to the potential capability of the soil of the current assessment date. The term when applicable to lands used for the growth of other agricultural products shall mean the capability of the soil to produce typical agricultural products of the region considering any natural deterrents to the potential capability of the soil' as of the current assessment date. The term 'region' shall mean that geographical part of the State as determined by the Tax Commission to be reasonably similar for the production of such agricultural products.
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> C. The provisions of Section 12-43-220 of the 1976 Code amended in paragraph B shall apply to the tax year 1979 and thereafter.

[7] Furthermore, subsequent to adding the references to "land" in 1979, the General Assembly specifically included a building component in the statutory method for calculating Agricultural Tax Value in Act 588, § 1 of 1988. The subsequent addition of a building component to the method for calculating "fair market value for agricultural purposes" reconfirms the General Assembly's intent to have the value of farm buildings included in a tract's Agricultural Use Value. See S.C. Code Ann. § 12-43-220(d)(2)(b)(i-ii) (including the USDA Table 1: "Value per acre of land and buildings").

agricultural real property were already included in the property's "fair market value for agricultural purposes" or Agricultural Use Value. See Montgomery v. Spartanburg County Assessor, Docket No. 13-ALJ-17-0101-CC (Admin Ct. 2013); Smith v. Clarendon County Assessor, Docket No. 11-ALJ-17-0191-CC (Admin Ct. 2011); Rabbit Point Farm Ltd. V. Charleston County Assessor, Docket No. 97-ALJ-17-0501-CC (Admin. Ct. 1998).

The Montgomery case involved virtually identical facts. The issue in Montgomery was whether structures on a tract of agricultural real property are assessed at fair market value separately from the property upon which they sit, or whether the value of those structures is already included in the tract's statutory fair market value for agricultural purposes. The Court held that the "[b]uildings and improvements located on the property may not be separately valued because their value is included in, and subsumed by, the fair market value for agricultural purposes." Montgomery v. Spartanburg County Assessor, Docket No. 13-ALJ-17-0101-CC (Admin. Ct. 2013).

The Smith case similarly involved the classification, assessment, and valuation of two houses previously used as residences, as well as multiple barns, sheds, and outbuildings. The assessor had assessed all structures at their full fair market value and then added it to the agricultural use value of the property. Smith v. Clarendon County Assessor, Docket No. 11-ALJ-17-0191-CC (Admin. Ct. 2011). Relying upon Section 12-43-230, the ALC found the majority of the taxpayers' property was used for agricultural purposes and qualified as agricultural real property, and therefore, the entire property, "both land and structures," must be classified and assessed as "agricultural real property." Smith v. Clarendon County Assessor, Docket No. 11-ALJ-17-0191-CC (Admin. Ct. 2011). The ALC rejected the Clarendon County Assessor's claim that the structures on the property must be valued at their "true money value" or "fair market value" and then added to the agricultural use value. Id. The ALC found that the tract's "fair market value for agricultural purposes" already included the value of the structures located on the property. Id.

In Rabbit Point Farm Ltd. v. Charleston County Assessor, Docket No. 97-ALJ-17-0501-CC (Admin. Ct. 1998), the taxpayer's entire 300.3 acre parcel had been classified and assessed as agricultural real property except for one acre containing a house with an attached wooden ramp leading to a dock and boat house. The assessor had assessed the one acre and the house with its improvements at six percent of their fair market value, and the taxpayer appealed. The

ALC found that the house was used in conjunction with the agricultural usage of the property, was used primarily for the maintenance and upkeep of the farm, and served as a farm office. Id. The Court thereby ordered, "the Taxpayers' property containing 300.3 Acres, specifically including the farm house and attachments...must be classified as agricultural real property" and assessed as such. Id.

ORDER

Based on the foregoing,

IT IS THEREFORE ORDERED that the Board's final decision in this matter is **REVERSED**. The Petitioner Dotsy, LLC's Parcels, identified as TMS # 7811-016-544-000 and TMS # 7801-804-128-000, shall be assessed and taxed based on their agricultural use value alone without adding a separate valuation for the improvements on the Parcels.

AND IT IS SO ORDERED

CAROLYN C. MATTHEWS
S.C. Administrative Law Judge

March 24, 2014
Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the party(ies) or their attorney(s).

This 24th day of March 2014

BY Mary Beth Campbell
Judicial Law Clerk